1946. **File No.** 0 Matadars / 46

Legal Department—

A BRANCH

Subject:—

Opinions under the Matadars Act.

1887

WP H/E

File No. 0 Matadars / 46.

Gen. 194 a.

362A

C O N T E N T S.

Legal Department File No. C. Matadars/46

Sr.No.	R.I./C.No.	Subject	Pages
		Opinions under the Mata Matadars Act.1857.	
1.	4602 22-6-46	Secs 6.7.9.10.15.17.16. and 19. Re:Clauses to the office of Patel of Malav, Taluka Kaira Distt. Kaira & Panchmahals	1-4

S.A.K.
11-7
5 copies

12/7

12/7

Office of the R.L.A.

In 1877 there were five claimants to the Patelship of Malav. taluka Kalol, district Broach and Panch Mahals and they were all descended from a common ancestor. After going through the evidence produced by the claimants, Mr. Wilson decided thatht the Office of Patel belonged to two of the five claimants. This decision was reverred 1890 by Mr. Maconochie who declared all the fi ve Matadars as having equal right to serve. In 1895, Dr. Peellen reversed Mr. Maconochie's decision . In 1908, it appears , Government recognised all the five matadars by its Government Resolution No. 7061, dated the 13th July 1908 but directed that three matadars should be excluded from the right of service. This order of 1908 was further confirmed in 1909, when Government issued Government Resolution No. 10540, dated the 1st November 1909, declaring under the proviso to section 6 of Bombay Act VI of 1887, as amended by Act III of 1890 that the right of revenue Patelship in the village of Malav vests exclusively in the matadar families Nos. I and II respectively represented by Chagnalal Tulsidas and Desaibhai Bajibhai and directed that the service should be performed by the two families in rotation of five years in the order named.

In 1938, the matadars who were excluded from service made a representation to Government and H.M. H.D. on hearing both the parties directed that all the five matadars should be given equal right of service (vide pages 29-30.ante). Government accordingly issued the necessary orders to the Collector in Government Memorandum, Revenue Department, No. 9932/33, dated the 30th November 1938 (page 33 ante).

In 1940, on a representation by Messrs. Bahubhai Chhaganbhai and Girdharbhai Desaibhai, Government reconsidered its orders issued in 1938 and cancelled them restoring its old orders of 1909; vide orders at pages 195-196 ante

S.A.K.
1147
4 copies

(notes underlying this decision at pages 151-191 ante).

The other three matadars have now approached Government with a request to restore the orders of 1938 and grant equal rights of service.

Secretary, Rev enue Department in is note dated 2nd May 1946 proposes that the case should be not be reopened; but observes further in paragraph 2 of his note as follows:-

"If Government desires to reopen the case, the best way will be to cancel the declaration under section 6 and decline to make any revised declaration. The position will then be that the Collector will be free to choose any person he considers suitable from the five matadvadars for the office of the Patel. This will also give the two matadars who claim an exclusive right to service, an opportunity to get their rights adjudicated in a Court of law. This will prevent frequent petitionsfor revision to Government and the civil court decision, if any, will be binding both on Government as well as the parties".

R.L.A. is requested to state whether paragraph 2 of Secretary, Revenue Department's note is in order.

2. In the event of Government cancelling the declaration made under section 6 of the Matadars Act, 1887 and declining to k make any revised declaration, the right to Patel's office will vest in each of the five matadar families entitled thereto in rotation under section 15; and under section 16 for the purpose of determining the order in which the said right shall vest in the said families, the Collector shall, as soon as may be, by written notice xxxxxx require the matadars of the village to assemble in his presence and if a majority of thematadars present in accordance with the said notice do not agree to some order of rotation, the order xxx shall be forthwith determined by the Collector by lot in the presence of theassembled matadars, in such manner as he shall think fit. The legal position stated by the Secretary Revenue Department that the Collector would be free to choose any

S.A.K.
11-7
4 copies

person be considered suitable from the five matadars for the office of the Patel does not therefore appear to be correct. On failure of the majority of the matadars of the five matadar faimilies to agree the Collector will have to fix the order of rotation under section 16 and proceed to select as provided in section 17 the officiator from among the members of the matadar faimly whose turn it is to enjoy the right of office and require him to officiate in person under section 19.

3. In Hanmant v. Secretary of State (32 B.L.R.) the Bombay High Court has held:-

> "The civil courts have no jurisdiction in matters which are within the exclusive jurisdiction of the Collector namely, the duty to determine the custom of the watan and what person shall be recognised as representative watandars under section 25 25 of the Hereditary Offices Act and to specify the names of the heads of the family and the proportionate part possessed by each head in preparing the register under section 67 of the Act. The civil courts have however the right to declare the plaintiff's right to the status of a watandar and to declare that the plaintiff is the nearest heir of the deceased representative watandar. Where Government has resolved that a certain person should be recognised as a rrepresentative watander of a watan, the suit brought against Government to set aside the Government resolution is barred under section 4 of the Bombay Revenue Jurisdiction Act, 1876."

The Matadars Act, 1887 and the Bombay Hereditary Offices Act, 1874 are Acts inpari materia; and in fact the latter Act with certain modifications applies to the matadars see sec. 14 of the Matadar's S. 10 of the Matadars Act provides that if at any time any person shall , by production of a certificateof heirship or or of a decree of a competent court, satisfy the Collector that he is entitled to have his name registered under section 7(b) or section 9 i in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the register to be amended accordingly . On cancellation of the declaration made under section 6 right to office right will vest in all the five matadar families; the two matadar families Nos. I and II can no longer claim the exclusive right to service and any

S.A.K.
11-7
4 copies

suit by them to enforce such right, not being of the description under section 10, may not be entertained by the civil court. Consequently, Secretary, Revenue Department's statement that the two matadars who claim an exclusive right of service will get an opportunity to get their rights adjudicted in a court of law, also does not appear to be correct.

Id/-P.N.Menon
27-6-46

Remembrancer of Legal Affairs.

U.R. to R.D.No. 4662, dated the 28th June 1946.

S.A.K.
11-7
4 copies